

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN LITTLE,)	CASE NO. C07-1317-BHS-MAT
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING DEFENDANTS'
)	MOTION TO SEAL AND MOTION
DAVE OSTER, et al.,)	TO AMEND ANSWER
)	
Defendants.)	
_____)	

Plaintiff is proceeding *pro se* and *in forma pauperis* in this action pursuant to 42 U.S.C. § 1983. Defendants have filed a motion for summary judgment (Dkt. No. 24), a motion to seal documents (Dkt. No. 23), and a motion to amend their answer. (Dkt. No. 31). Having reviewed the motions and the balance of the record, the Court does hereby find and ORDER as follows:

(1) Defendants' motion for summary judgment is noted for May 23, 2008, and will be considered at that time. Plaintiff is reminded that his response, together with supporting documents, is due no later than **May 19, 2008**.¹

(2) In order to comply with the state statutory requirement that certain records pertaining to incarceration remain confidential, defendants' motion to seal (Dkt. No. 23) is

¹ Under the "prison mailbox rule," plaintiff's response must be deposited in the prison's mail system no later than this date. *See Houston v. Lack*, 487 U.S. 266, 270 (1988).

01 GRANTED.

02 (3) Leave to amend a pleading should be freely given when justice so requires. *See*
03 Fed. R. Civ. P. 15(a)(2). In their motion to amend their answer, defendants state that they
04 inadvertently admitted in the answer that plaintiff “agreed to be located anywhere but in Module
05 4 North and Module 5 South.” (Dkt. No. 31 at 1). Defendants seek to change this admission to
06 the following: “Defendants admit that Plaintiff, during the time relevant to plaintiff’s complaint[,]
07 was housed in Module 4 North or Module 5 South.” (*Id.* at 2).

08 In support of their motion to amend, defendants point out that in his complaint, plaintiff
09 did not allege that he agreed to be located anywhere but in Module 4 North and Module 5 South.
10 Moreover, the erroneous admission by defendants is now flatly contradicted by defendants’
11 assertion in their motion for summary judgement that plaintiff *refused* alternative locations. (Dkt.
12 No. 24 at 13). While plaintiff may dispute defendants’ assertion when he files his response to the
13 motion for summary judgment, it does not follow that defendants are precluded from altering the
14 erroneous admission in their answer to conform to their later assertions. Accordingly, defendants’
15 motion to amend (Dkt. No. 31) is GRANTED.

16 (4) The Clerk shall send a copy of this Order to plaintiff, to counsel for defendants, and
17 to the Honorable Benjamin H. Settle.

18 DATED this 15th day of May, 2008.

19
20 
21 Mary Alice Theiler
22 United States Magistrate Judge